more readily identifying the will as genuine. *Appeal of Canada,* 47 Conn. 450; *Pollock* v. *Glassell,* 2 Gratt. 439. In view of the fact that under common law rules of evidence a will might be established or overthrown by the testimony of witnesses other than the subscribing witnesses, it would not seem unreasonable to say that the term "competent" witness, as used in this statute, need not have been construed to mean a subscribing witness. A dissenting opinion distinguishes between competent witnesses and competent subscribing witnesses, and maintains that the legislature had used the term "competent" witness purposely, not meaning thereby a subscribing witness. Since the present statute was an amendment of a previous one in which the term "competent subscribing" witness was used, this contention seems the more forceful. The majority opinion characterized this omission as being legislative inadvertence. While sheer weight of precedent supports the decision, the rule of *In re Irvine's Estate, supra,* and the dissent in the principal case seem to have reason with them.

WILLS—TESTATOR COMPELLED TO MAKE A WILL—PROOF OF ANIMUS TESTANDI.—An instrument, sufficient in form to constitute a duly executed will, was offered for probate. The purported will was found in the archives of the Masonic Order. Testimony showed that thirteen years prior to his death deceased executed the instrument while there was being conferred on him a degree of the secret order mentioned, and that the making of the will was a part of the ceremony required of all candidates who had not theretofore made a will. *Held,* deceased executed the instrument intending it to be his will. *In re Watkins' Estate,* (Wash., 1921), 198 Pac. 721.

An instrument to be a will must fulfill two requirements: it must be executed in accordance with the requirements of the statute; and the testator, at the time he executed it, must have had the *animus testandi.* There is no question in the principal case as to the former requirement, but the question is raised as to the latter—whether there is present the *animus testandi* when one is compelled to make a will, but is left free as to its provisions. In a North Carolina case decided in 1920 the deceased did not want to make a will, but the family physician informed him that he could not recover and compelled him to make one. Evidence showed that the deceased was uninfluenced as to its provisions. It was held that the instrument expressed the will of the testator and was therefore valid, even though executed under compulsion. There was a strong dissenting opinion, however, wherein it was argued that the undue influence used in getting the deceased to execute the instrument kept it from being his will. *In re Lowe's Will,* 104 S. E. 143. The decision in the principal case turns upon the question as to the amount of proof required to establish whether or not the instrument expresses the will of the testator. In establishing lack of *animus testandi,* the same rule governs as in establishing undue influence. The general rule is that the burden is upon the contestants. *Egan* v. *Egan's Ex'r,* 189 Ky. 332; *Burke* v. *Burke,* 184 N. Y. Supp. 673; *Quaratiello* v. *Di Biasi,* (R. I., 1921), 112 Atl. 215; *Lister* v. *Smith,* 3 Swabey & T. 282. In *Roe* v. *Duty,* (Wash., 1921), 197 Pac. 47, it is held: "In the contest of a will for undue influence, the

testimony to overcome the will must be cogent and convincing." A Mississippi case, in 1921, however, takes the opposite view as to the burden of proof, holding that when due execution and mental capacity are proved the proponents make out a prima facie case. When the contestants bring in evidence of undue influence, the burden of proof is upon the proponents to produce a preponderance of evidence. *Isom* v. *Canedy*, (Miss., 1921), 88 So. 485. The testimony in the principal case is sufficient to uphold the will even under the rule of the Mississippi case, for in the majority opinion it is said: "It remains to inquire whether the testator intended the instrument to be his will and testament. The evidence on the question is somewhat meagre, but we think the decided weight of evidence is that he so regarded it." But the dissenting opinion is not satisfied with even the rule of the Mississippi case requiring the proponents to produce a preponderance of evidence: "Mere preponderance of evidence should not be sufficient; the evidence should be such as to clearly, convincingly, and satisfactorily establish the intention." No authority is cited for this proposition and it is submitted that such a rule goes beyond the holding of decided cases.

WITNESSES—CROSS-EXAMINATION—PREVIOUS ARREST AND CONVICTION AS AFFECTING CREDIBILITY.—In a pedestrian's action for injuries against an automobile owner the defendant was asked on cross-examination whether he had ever been arrested and convicted. *Held,* admissible on the issue of his credibility, the court saying that in determining the weight to be given his testimony the jury had a right to know what manner of man he had been. *Van Goosen* v. *Barlum* (Mich., 1921), 183 N. W. 8.

The rule of the common law was that persons convicted of treason, felony, and the *crimen falsi* were rendered infamous, and were disqualified as witnesses. In determining whether the crime was infamous the test seems to be "whether the crime shows such depravity in the perpetration, or such a disposition to pervert public justice in the courts, as creates a violent presumption against his truthfulness under oath." *Smith* v. *State,* 129 Ala. 89. This disqualification has now, of course been removed by statute, but conviction of some crimes is everywhere conceded to be admissible for the purpose of impeachment. However, due to statutes and difference in judicial opinion, the authorities are not in harmony as to what convictions may be shown for this purpose. Some cases hold that the conviction must be for a crime of an infamous character. *Matzenbaugh* v. *People,* 194 Ill. 108; *State* v. *Randolph,* 24 Conn. 363; *Williams* v. *State,* 144 Ala. 14. Sometimes a distinction seems to be drawn as to whether a misdemeanor involves moral turpitude or not. *Wheeler* v. *State,* 4 Ga. App. 325; *Hightower* v. *State* (Tex.), 165 S. W. 184. The tendency, however. is to simplify the rule defining the kinds of crime and make it all crimes or felonies, thus doing away with the subtleties of the common law. WIGMORE ON EVIDENCE, Vol. 2, Sec. 987. The Michigan court seems to define crime as meaning all criminal offenses, whether felonies or misdemeanors. It seems difficult to see how conviction for some misdemeanors would throw light on a witness's credibility, but such a rule is upheld, perhaps, on the theory that if he has been guilty of violation of law he might be more apt